IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/09/2003

CORAM

THE HONOURABLE MR. JUSTICE N.V.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.15955 of 1998

B.Sekar .. Petitioner.

-Vs-

1. The Commandant,
CISF Unit,
Chennai Port Trust,
Chennai-1.

2. Deputy Inspector General,
CISF (SZ),
Besant Nagar,
Chennai 600 090. .. Respondents.

Petition filed under Article 226 of the Constitution of India, praying for issue of a writ of certiorarified mandamus as stated therein.

For petitioner : Mr.Mohamed Ibrahim Ali.

For respondents : Mr.K.Veeraraghavan,
Addl. Central Govt.
Standing Counsel.

:ORDER

K.P.SIVASUBRAMANIAM.J.

The petitioner who was working as a Constable in the Central Industrial Security Force, has sought for the issue of a writ of certiorarified mandamus to call for the records relating the order of the second respondent dated 15.09.1998 confirming the order of the first respondent dated 27.06.1998.

2. The petitioner who claims to have been working without any blemish was charge-sheeted on the following two allegations:-
"Charge-I

CISF No.854150906 Constable B.Sekhar of 'C' Coy CISF Unit, Ch.P.T. Chennai was found absent from duty at 20.30 hrs. on 2/3-3-98 when checked by ASI/E A.S.Rayan without any intimation/permission from the competent authority and misbehaved with Sub-Officer on duty under influence of liquor when an entry was made to that effect in GD at about 21.4 5 hrs. on 2/3-3-98. This act of Constable B.Sekhar amounts to gross indiscipline, misconduct and insubordination quite unbecoming of a member of disciplined force.

Charge-II

CISF No.85415096 Constable B.Sekhar of CISF Unit, Ch.P.T.Chennai has been awarded 30 punishments so far in his service. He developed an incorrigible nature of absenting himself from duty, series of acts of indiscipline/misconduct etc. during his service in CISF. This nature of Constable B.Sekhar amounts to serious misdemeanour quite unbecoming of a member of the disciplined Armed Force of the Union."

3. The petitioner submitted his reply on 23.3.1998 denying the charges. An Enquiry Officer was appointed to enquire into the charges framed against the petitioner. An enquiry was conducted and the Enquiry Officer submitted his report on 30.06.1998 holding that the charges were proved against the petitioner. Thereupon the petitioner was called upon to show-cause against the conclusions of the Enquiry Officer. The reply furnished by the petitioner was not satisfactory and hence in exercise of the power conferred under C.I.S.F. Rules, an order of removal from service was passed by the Commandant. Aggrieved by the same, the petitioner filed an appeal before the second respondent. The second respondent also on consideration of the grounds of appeal, declined to interfere with the punishment and hence confirmed the order of removal of service. Hence the above writ petition.

4. Mr.Mohamed Ibrahim Ali, appearing for the petitioner contends that the petitioner had unblemished service record and it was only due to the misunderstanding with one Rayan, A.S.I., the petitioner has been falsely implicated in the aforesaid charges. He had left the place of duty only for a few minutes after reporting to the competent person. But this circumstance was taken as an excuse to unnecessarily penalise the petitioner and the said Rayan deliberately posted a substitute in his place only to provoke the petitioner. There was absolutely no evidence to show that he was under the influence of liquor and no evidence has been produced either oral or by medical certificate to the effect that he was intoxicated. Such a charge has been made only to justify imposing of extreme punishment on the petitioner on the basis of the false charges. Learned counsel also took us through the findings rendered by both the authorities and contended that the findings have been rendered without any evidence. It is further stated that both the respondents have not considered the written statement and explanation filed by the petitioner. A perusal of the impugned order will show that there is absolutely no discussion of the various defences raised by the petitioner.

5. Learned counsel also contends that at any rate, the punishment of removal from service for such a minor offence alleged to have

been committed by the petitioner, was totally disproportionate to the alleged misconduct. It could have been dealt with under Rule 35 of the Rules. Learned counsel also contends that unauthorised absence for 41 days, is not a major offence. There is no proper consideration of the grounds raised by the petitioner in the appeal to the Appellate Authority.

6. We have also heard learned counsel for the respondents/C.I.S.F. We have considered the submissions of both sides. As regards both the charges which have been found as proved by the original authority as well as the Appellate Authority, there is absolutely no ground on which the findings could be interfered with. It is true that in respect of first charge, there is no positive evidence to the effect that the petitioner was under the influence of liquor. But there is ample evidence to show that the petitioner had misbehaved in a rude and undisciplined manner. A perusal of the evidence shows that the petitioner has gone to Pan shop leaving the place of duty and he was not available for a long time on the Workspot. Therefore, the respondents were justified in posting a substitute in his place considering the nature of the duties which were discharged by the petitioner. Later, the petitioner was seen coming from outside the gate. After finding that a substitute has been posted in his place, he had become very angry and went to the extent of removing the General Diary and was also shouting. It is also seen that he was trying to make use of wireless followed by abusive language. He had to be removed from the place with a group of CISF persons. Therefore, even without the proof of the allegation that the petitioner was under the influence of liquor, the other proved acts of the petitioner establish that the petitioner had indulged in a misconduct which is unbecoming of a constable of paramilitary force. He has not only abused his superiors, but also attempted to question the entry made in the General Diary and had tried to make use of the wireless. The above facts are sufficient to hold that the rude behaviour of the petitioner does not warrant any sympathy from this Court.

7. A perusal of the second charge clearly shows that the petitioner had already suffered 30 punishments in the course of his tenure of about 13 years of service. Though learned counsel for the petitioner attempted to explain the same by stating that the nature of the delinquencies was very minor and that the punishments were also minor, on a perusal of the records, it is seen that he had been punished on various occasions for abandoning the place of duty. It is further seen that at least on five occasions, he had been awarded with punishment for having been found under the influence of liquor while on duty.

8. We do not find any ground in the contention of the petitioner that one Rayan, A.S.I., had acted with mala fide intention to falsely implicate the petitioner. Apart from the bald claim of the petitioner, there is no material to substantiate the said allegation. The fact of the petitioner's absence on the duty spot at the relevant point of time, is not seriously disputed. What is disputed is only the length of time during which the petitioner was absent from the workspot. While the petitioner contends that it was only for a short period of two or three minutes while he had gone to the shop, the evidence clearly shows that the

petitioner was absent for a long time to warrant posting of substitute in his place and in fact a substitute had also been posted and taken charge. The said process could not have been complied within a short time of two or three minutes.

9. Apart from the proved charges, as stated earlier, the petitioner had undergone punishment at least on 30 occasions, the major instances of such punishments for the very same offence of being negligent in duty. Again at least on five occasions, he was found under the influence of liquor while on duty. It is needless to emphasis that in a paramilitary force like C.I.S.F. at least, discipline must be maintained. The nature of duties entrusted to them are very important and the petitioner has been posted at Port Trust and such negligence as on the part of the petitioner is sure to result in serious consequences. As a member of the Uniformed force, he is expected to maintain discipline and having regard to the nature of the proved charge as well as the chronic misconduct as established by the records the order of removal from service, is justified.

10. Learned counsel for the respondents has rightly relied on a judgment of a Division Bench of this Court in in UNION OF INDIA & OTHERS v. SUDHIR KUMAR DAS (W.A.No.219 of 1999 dated 27.3.2003). In that case, the petitioner was absenting from duty without proper permission. Though the petitioner succeeded before the learned single Judge, the Division Bench on appeal by the C.I.S.F., observed that the Court was concerned with a member of uniformed force where discipline was of utmost importance and that the members of the C.I.S.F. were to provide security to major institutions belonging to the Government and Public sector undertakings in the country and hence they should maintain high sense of duty and observe strict rules of discipline any failure in the said said context will render them unfit to the services for which they have been recruited. Consequently, Writ Appeal was allowed as against the employee.

11. We are in respectful agreement with the observations contained therein and having regard to the facts and circumstances stated above, there is no warrant to interfere with the order of removal from service. Hence the writ petition is dismissed. No costs.

Index: Yes.
Internet: Yes.

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To
1. The Commandant,
CISF Unit,
Chennai Port Trust,
Chennai-1.

2. Deputy Inspector General,
CISF (SZ),
Besant Nagar,
Chennai 600 090.